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# Chasing Rights in Delhi: Social Movements and the National Food Security Act

Nandini Nayak

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“These days, Aadhaar is a key tool used to attack  
the poor”

Bhasha Singh, Journalist, speaking as a Panelist at  
the National Public Hearing on “Living with  
Hunger,” Right to Food Campaign, Delhi, 15  
March 2018.

## Introduction: Contextualising ‘Rights Based Approaches’ to Development

- <sup>1</sup> The 2000s saw the enactment of legislations related to civil, political, economic and social rights in India, that advocated a “rights-based approach” to development. Driven by social movements that emerged in the Indian context (Khera 2013; Nayak 2008, 2016, 2017; Ruparelia 2013), legislations enacted from 2005-2013 in one way or another made a case for the extension and expansion of Constitutional Rights and in turn the idea of citizenship. Specifically, a Right to Information Act aimed at creating transparency in governance was passed by the Indian Parliament in 2005. Two legislations expanding social democratic rights, and creating rights to social protection included the following—the National Rural Employment Guarantee Act (NREGA), passed in 2005,<sup>1</sup> followed by a Right to Education Act for children in the six to fourteen age group in 2009.<sup>2</sup> A right to land titles in forest areas was created under a Forest Rights Act in 2006.<sup>3</sup> The National Food Security Act (NFSA), which details economic claims and rights related to food and nutrition, was passed by the Indian Parliament in 2013. The enactment of these legislations drew on a history of collective action and litigation related to Constitutional law, as highlighted later in this paper. Nonetheless, the above

mentioned legislations expanded the idea of citizenship by creating new *justiciable* rights that citizens could claim against the state as an extension of rights available in Constitutional law.

- 2 In recent years, the process of implementation of these legislations, has, in one way or another been circumscribed by two mechanisms: first, by the use of the Aadhaar biometric identification system as a tool for implementation of these programs, and second, by the use of executive orders, that undermine enacted rights. It may be noted that some but not all of these executive orders pertain to the use of Aadhaar for program implementation. It could be suggested that the celebrated expansion of citizenship by way of the above mentioned legislations has in the recent past faced a backlash and has been superseded by technological and administrative gate keeping, or the creation of a “precarious” and “coded” citizenship.<sup>4</sup>
- 3 This paper draws on primary research carried out between 2015 and 2018, which included a household survey in four districts in Delhi on accessing food under the National Food Security Act. The article also draws on government records on implementation of the National Food Security Act as well as archival records of the Right to Food Campaign, India.
- 4 In section two, I contextualise the enactment of recent “rights based legislations” in India, highlighting that struggles related to claiming citizenship have a long history in the country, an important part of which pertains to litigation related to Constitutional law. In section three, I discuss the implications of rights enactment, particularly in relation to the Public Distribution System (PDS) a program for distribution of subsidized food grains brought under the NFSA in 2013. In section four, I argue that while biometric identification technologies and administrative interpretations of the law create new forms of exclusion from social protection and a hurdle to accessing citizenship, collective action serves to render these exclusions visible, thus creating the possibility that rights legislations will retain progressive potential (Santos 2002).

## A brief history of rights-based collective action in India (and, accounting for the enactment of “new rights”)

- 5 The historical root of the recently enacted legislations can be traced to a wave of litigation based on Constitutional law that began from the late 1970s onwards in the period following the Internal Emergency in India from 1975–1977. The late 1970s and 1980s saw a significant phase of what Indian jurist Upendra Baxi (1985) calls “judicial activism,” which in turn is one of the factors that helps explain the context that led to the enactment of the above mentioned statutes. Social movements arguing for all of the above legislations have built on and used legal pronouncements from the higher courts and the Supreme Court of India while making a case for new rights in law. Collective action for the right to food grew around a writ petition, filed in the Supreme Court of India by the People’s Union for Civil Liberties in 2001.<sup>5</sup> This writ petition was filed against the backdrop of a severe drought that was affecting several parts of the country. The Right to Food campaign—a network of civil society actors spread across the country—grew around grassroots mobilizations and research related to this civil writ petition, several years prior to the enactment of the NFSA in 2013.<sup>6</sup>

- 6 This of course still leaves the question of why these legislations were enacted in the above mentioned period (2005-2013). Part of the answer to this question might be found in work done by Deepta Chopra (2011) on the process that went into the enactment of the NREGA in particular. Chopra discusses the blurred boundaries between “state” and “society” in the Indian case that allowed key social movement actors to engage directly in the law making process for NREGA, which was replicated to an extent in the enactment of the National Food Security Act, 2013.
- 7 It may be noted that the rights based approach to development has also been popular in the international development bureaucracy since the 2000s. In the international development arena, rights based approaches to development acquired prominence in the mainstream, in a period when the Washington Consensus, that advocated extensive state withdrawal from social protection and provisioning, had come to be widely criticized. The Post-Washington Consensus that followed advocated bringing the state back into development, making a case for state accountability in relation to social protection programs (Saad-Filho 2010). As discussed later in this section, social movements pushing for new ‘rights’ in India were not driven by, and did not locate their intellectual origins in, the international acceptance of rights based approaches to development mentioned above. In the Indian context, the use of collective action and Constitutional law to challenge state excesses and demand probity in implementation of government programs has had independent and often very local historical roots. Nonetheless, even movements for the ‘right to food and work’ in India did deploy the ‘rights talk’ of the development mainstream in their claim making against the state. It might be suggested that the Congress-I led United Progressive Alliance (UPA) government in power in India, in the period of enactment of these legislations, found the narrative of rights acceptable, partly owing to the international acceptance of the rights agenda. Part of the explanation for the enactment of new laws then, if marginally and somewhat tangentially, might be related to the “emergence of rights as an emancipatory script” (Santos 2002) in international development discourse.
- 8 The foundation of the Aadhaar based biometric system was also laid down by the Congress-I led UPA, in 2009. A more conservative right-leaning Bhartiya Janata Party (BJP) government took office at the Centre in Delhi in 2014, after which the use of Aadhaar expanded significantly. So while there has been some cross-party acceptance of Aadhaar as a techno-managerial tool, it can be argued that the significant expansion of Aadhaar based implementation of rights legislations after 2014 became an important administrative device through which to argue for efficiency on the one hand and to simultaneously reign in the citizenship rights that were earlier expanded with the enactment of the aforementioned legislations.
- 9 I now return to the discussion on “judicial activism” and “(constitutional) rights based collective action” which I began earlier, with the aim of providing a historical context to the enactment of new legislations like the NREGA and NFSA. This discussion is also aimed at putting Aadhaar linked “coded-citizenship” in perspective. The introduction of the Aadhaar system introduces new kinds of vulnerability and precarity in claiming rights, as is highlighted later. It is argued however, that there is a constantly evolving process of contestation between the expansion of and reigning in of claims to citizenship. Within this contentious process, collective action and public dissent have been key to retaining a progressive idea of citizenship.

- 10 A history of litigation related to Constitutional law can be traced to the early 1980s. The higher courts<sup>7</sup> where writs of mandamus<sup>8</sup> and habeas corpus<sup>9</sup> could be filed, evolved a particular tradition of Social Action Litigation (Baxi 1985), where rules related to locus standi<sup>10</sup> were waived. The waiver of rules related to locus standi implied that even without being directly affected by a violation of Constitutional or legal rights, an organization or individual could file a writ in a higher court of law, on behalf of persons whose rights were violated. As highlighted by Baxi (1985), Social Action Litigation in India was focused substantially on civil and political rights violations experienced by the rural and urban poor at the hands of the state.<sup>11</sup> The rights being drawn on in the wave of Social Action Litigations<sup>12</sup> from the early 1980s onwards were constitutionally defined “fundamental rights,” or civil, political, economic and social rights laid out in Part III of the Constitution of India.<sup>13</sup> Constitutional theory and practice were viewed as being at the very center of Indian development and democracy (Baxi 2001).
- 11 In a number of landmark cases, the Supreme Court of India expanded the meaning of the fundamental “right to life and personal liberty” under Article 21 of the Constitution of India (Bhushan 2004:1774). The “right to life” under Article 21 was interpreted to include within its meaning a wide range of civil and political rights that were not explicitly written into the Constitution. Thus, Article 21 of the Constitution of India was interpreted to include the civil right to trial without delay in the event of arrest [Hussainara Khatoon case, 1980] and a right against forced labor [Bandhua Mukti Morcha case, 1984].
- 12 Litigation related to Part III of the Constitution of India was also used to seek economic rights. Thus without the actual enactment of a legislation, the Judgement in the Olga Tellis case (1986) stated that “pavement dwellers” (or shack dwellers) in Bombay have a right to housing and livelihood and a right against eviction by the Municipal Corporation. Employment works or public works implemented by central and state governments were also the subject of social action litigation in the early 1980s. In 1983, the Supreme Court passed a judgement under Article 23 (right against human trafficking and forced labor) and Article 14 (equality before law and equal protection before the law)<sup>14</sup> of the Constitution of India in the Sanjit Roy v. State of Rajasthan case, where the case judgement emphasized that State governments would stand accused of engaging forced labor (or bonded labor) if the statutory minimum wage was not paid to workers engaged on public worksites run by the government.<sup>15</sup> Thus the Supreme Court clearly stated that a statutory minimum wage must be paid by the State when it acts as employer on public worksites. Importantly, the public worksites referred to here, were precursors to those now implemented under the NREGA.
- 13 Social action litigation based on Constitutional law and the interpretation of fundamental rights was thus critical to “expanding” the idea of “citizenship” for “India’s poor” (Baxi 1985:115). Baxi traces this significant change in the role of the Indian higher judiciary to “judicial populism” as a form of “catharsis” in the aftermath of the internal Emergency imposed in India from 1975-1977 (Baxi 1985:107-8). During the Emergency, the Supreme Court effectively towed the line of the Executive. In contrast, in the post-Emergency period and particularly throughout the 1980s, the higher judiciary played an interventionist role often issuing directions to the Executive to carry out its relevant functions. In the process, the Supreme Court of India “established the principle that the judiciary was morally required and constitutionally

mandated to increase its responsiveness to citizen requests for remedial action” in relation to government agencies (Goetz and Jenkins 2001:367–8).

- 14 The moot point here is that though not without its contradictions, this was an important phase in the expansion of the idea of citizenship drawing on constitutional rights. To some extent the “post-colonial legal fiction of equality before law” (Chatterjee 1984) was challenged by way of social action litigation, with the expansive interpretation particularly of Article 21 of the Constitution of India. As is the case with the present period of precarious access to rights, there was inherent contestation in the process of demanding the expansion of the idea of citizenship.
- 15 The trend of “pro-poor” decisions from the Supreme Court of India in the 1980s had abated by the 1990s. Prashant Bhushan (2004), for instance, cites several cases where in the 1990s, the Supreme Court took a position of non-interference with executive decisions of the government of the day. In a prominent case pertaining to government disinvestment from BALCO,<sup>16</sup> a state run company, a social action litigation was filed in the Supreme Court raising concerns about the loss to the public exchequer due to the arbitrary price at which the company was being sold. The case was dismissed by the Supreme Court. Amongst other observations the Court stated, “public interest litigation (sic.) was not meant to be a weapon to challenge...financial or economic decisions...taken by the government in exercise of their administrative power.” Importantly for the purpose of this paper, Bhushan also cites instances where the Supreme Court put forward overtly “anti-poor” decisions. In a judgement delivered in 2000, the Supreme Court ruled *against* the right to housing of slum dwellers in the capital, New Delhi. In this petition, arguing for the re-housing of evicted slum dwellers, the Court observed “the promise of free land at tax-payers expense (in place of a slum hutment)...attracts land gabbers (and is akin to) giving a reward to a pickpocket.”<sup>17</sup>
- 16 The 1980s trend of progressive legal judgements rooted in constitutionally mandated fundamental rights was therefore not linear by any means, and had abated by the 1990s (Bhushan 2004). Yet, in 2001, the Supreme Court accepted a petition, once again linked to Article 21 of the Constitution of India, where significant orders were passed by the Court on food related welfare programs of the Government of India. The case, popularly known as the “right to food case,” was filed by the People’s Union for Civil Liberties acting on behalf of a larger collective of organizations, the Akaal Sangharh Samiti (ASS) (or, drought action committee) (Drèze 2002). The point of law being argued was that the denial of the right to food amounts to a denial of the fundamental right to life and personal liberty. The petition filed in the Supreme Court of India argued that despite the fact that unprecedented food stocks had been accumulated at government storehouses, the State Government of Rajasthan had refused to either distribute food or initiate employment works as a drought relief measure in the face of a severe drought and mass hunger. The petitioner argued that the State of Rajasthan was, in effect, abrogating its duty to protect the right to food and (by extension) the right to life of the drought-affected population. A more recent and seminal judgement expanding citizenship rights was delivered in 2017, in the K. S. Puttaswamy case, where the Supreme Court held that the “right to privacy” is essential to leading a life of dignity.
- 17 Collective action was central to the PUCL v. Union of India or “right to food case” filed in the Supreme Court in 2001. In fact, much of the surge in social action litigation in the 1980s, in addition to being effectively encouraged by the Supreme Court, was also supported by activist groups and organizations. Speaking about activism and the

Supreme Court's 'cathartic' engagement with social action litigation in post emergency India, Baxi comments that the law and fundamental rights have been used as a tool by activist groups, and further that, "in a sense the New Politics (in India) (was) broadly constitutional politics" (1986:58). This "New Politics," based on a language of "rights," acquired prominence despite raising several significant questions regarding the separation of powers between the legislature, executive and the judiciary, a feature of all modern Constitutions. Yet, judicial activism driven by social movements, the blurring of boundaries between state and society (Chopra 2011), and indeed between the organs of government (Baxi 1985) helps explain recent rights based development and contestations over citizenship in India.

- 18 I now move to discussing the efficacy of rights, and by extension the potential for the expansion of the idea of citizenship.

## Do rights work?

- 19 There is a substantial amount of literature theorizing the efficacy of rights. In the present context it might be pertinent to ask, what is the theoretical response to whether a text of rights can work in and of itself? Or is it the case that the working of rights requires more than the presence of legal text? A Member of the Indian Parliament, D. Raja<sup>18</sup>, while attending a Right to Food Campaign meeting on disruption in PDS implementation due to Aadhaar (March 15, 2018) stated, "questioning how the NFSA (the law) works must be done in many forums...both in Parliament and outside Parliament (including on the streets)."
- 20 In light of the focus of this paper, a key question then is that if collective action is an important part of how rights-in-text can translate to rights that are in fact realized, what is the specific implication of the deployment of techno-managerial tools such as Aadhaar numbers for claiming rights such as food grain under the PDS? One response might be that since written citizenship rights merely create the "possibility" of "emancipation" (Santos 2002), the process of claiming rights from the state in the face of new technologies such as Aadhar effectively involves the deployment of new—and old—"repertoires of contention" to claim rights (Tarrow 2011). Thus, even in the moment of technological coded citizenship, the long history of collective action (Sinha 2008) for rights to information, food and work, has a critical importance and relevance. In short, old repertoires of contention have had to be expanded and attuned to a new context in order to respond to new challenges related to social policy implementation.
- 21 I move now to a brief analytical discussion related to the question of the relevance of rights, after which I move to discussing implementation of the PDS under the NFSA.
- 22 As mentioned above, an important question worth considering is whether a "language of rights" can contribute to the realization of progressive social change (Hunt 1990). Progressive social movements across geographical and political spaces have sought to use the law as a tool for social change. Amongst these movements, one can include groups as diverse as the American Civil Rights Movement in the 1950s and 1960s (Hunt 1990; McCann 2006), and the "right to information," the "right to food" and the "right to work" campaigns in India in more recent years (Drèze 2002; Drèze and Khera 2017; Goetz and Jenkins 2001; Khera 2011, 2013; Mander and Joshi 1998).<sup>19</sup>



- 23 There is a tension between “liberal” and “social democratic” arguments for rights, within the literature theorizing rights. Liberal legal jurisprudence makes a case for individual freedom, rights and duties (Menon 2004; Sypnowich 1992). Critical Legal Theorists question the “liberal legal ideals of impartiality and individual rights,” since these mask domination (Scheingold 2004:204), and according to Marxist legal scholars, “maintain the rule of the dominant class” (Sypnowich 1992:80–1). Yet, critical legal theorists of diverse persuasions draw on the language of rights to argue for social change.
- 24 Proponents in favor of rights include those who argue that rights are “a significant, yet not exclusive vehicle for realizing the goals of progressive social movements,” thereby questioning the “liberal faith in rights” (Hunt 1990:309). Stuart Scheingold, for instance, warns that the discourse of rights might only serve to propel the “myth” that rights can, in fact, be realized. In effect he argues against unquestioning “faith” in the “political efficacy and ethical sufficiency of law as a principal of government” (Scheingold 2004:17). Boavetura de Sousa Santos suggests that “law has both a regulatory or even repressive potential, and (also) an emancipatory potential” and, further, that “the way law’s potential evolves, whether towards regulation or emancipation, has nothing to do with the autonomy and self-reflexivity of the law, but rather with the political mobilization of competing social forces” (Santos 2002:85).
- 25 In relation to the “right to information,” the “right to work” and the “right to food” in the Indian case, it is pertinent to consider the extent to which these legal enactments have led to a significant shift in power relations, or whether existing dynamics of power are left undisturbed by these “new rights.” Further, it is worth dwelling on the inherently contested process of the implementation of “new rights” enacted by the Indian Parliament. I now turn to these issues.

### Has the NFSA worked?

- 26 The National Food Security Act (NFSA), enacted by Parliament in 2013, brought the pre-existing Public Distribution System (PDS) under its fold. Other government programs brought under the legal framework of the NFSA were the mid-day meal scheme (MDMS) for school children; a nutritional scheme aimed at 0–6 year olds, pregnant women, nursing mothers and adolescent girls under the Integrated Child Development Services (ICDS), and a scheme for Maternity Entitlements. The NFSA expanded the scope of implementation of the PDS, ICDS and MDMS, while universal maternity entitlements introduced in the NFSA were entirely new. Thus, in relation to key social protection programs, NFSA enactment implied a progressive expansion in citizens’ rights coded in law.
- 27 The Public Distribution System itself has long history of implementation in India starting from the late colonial period (Mooij 1999). In the post-Independence decades from the 1950s to the 1980s, there was an expansion in the public distribution system, with the program veering towards near universal implementation by the 1980s. A significant change was made in the PDS in 1997, when the program was explicitly reorganized to be targeted to Below Poverty Line households. In the years between 1997 and 2013, Tamil Nadu continued to implement a universal program, while other states—most prominently Chhattisgarh—made improvements in state level institutional arrangements for the program (Khera 2011; Drèze and Khera 2017).



Nonetheless, at a national scale, the enactment of the NFSA in 2013 marked a significant moment of institutional expansion of the PDS, from an earlier situation where the scope of the program had been reduced in the vast majority of states.

- 28 Under the NFSA, the PDS was to extend to 75 percent of the rural population and 50 percent of the urban population of India.<sup>20</sup> Household surveys conducted in several states after NFSA enactment suggested that access to food – and in turn citizenship rights – had in fact expanded. Drèze et. al. (2016) conducted a survey of 3600 households in June 2016 in six of India's poorest states, namely Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha and West Bengal. It was found that the proportion of sample households with PDS ration cards after NFSA implementation was 27 percent higher than before NFSA implementation.
- 29 A survey of 320 PDS beneficiary households from four Districts in Delhi (Northwest, West, East and South) conducted during May–July 2016<sup>21</sup> had a similar finding in relation to the expansion of PDS ration cards. It was found that among sample households, access to the PDS had expanded after NFSA implementation, with 26.5 percent of sample households stating they did not have PDS ration cards before NFSA implementation. Importantly, 87 percent of sample households stated they had purchased PDS food grain at least once in the four months preceding the survey; in other words, they had used their legal entitlement to actually purchase food from their local “fair price shop” (or “ration shop”) (c.f. Nayak and Nehra 2017).
- 30 In the Delhi survey, it was found that an important aspect of implementation was adherence to Section 13 of NFSA, which states the eldest adult female will be recorded as the Head of Household for the purpose of the PDS ration card, unless such a person does not exist. Amongst sample households, the head of household on the PDS ration card was a woman in 98 percent of the cases. Thus citizenship claims pushed by NFSA implementation were not merely related to social protection, but were also gendered and emancipatory in other ways. The potential significance of the NFSA as a source of social security could also be gauged by looking at the profile of the heads of households. Of the sample households covered, 69 per cent of heads of household were educated up to class VIII (Middle School) or lower. 67 percent of heads of household stated they were home-makers and did not have a regular source of income. 20 percent of the remaining heads of household indicated they had precarious access to work, including as domestic household workers, or they were currently unemployed. Only 4 percent heads of household stated they had a regular source of income, although, very importantly, not a single one of them was in contractually secure employment. For these households, food grain accessed from the PDS was a significant means of coping with vulnerability (c.f. Nayak and Nehra 2017).
- 31 Despite these positive trends, implementation has been marked by a complex politics. As discussed earlier, rights defined by the legislature have to some extent been eroded by government orders on implementation issued by the Executive.
- 32 Between January and March 2017, no less than 60 Gazette Notifications were issued by various Ministries of the Government of India, stating that Aadhaar should be used in the process of service delivery of various government programs.<sup>22</sup> These notifications were issued not only in relation to social protection or the rights legislations mentioned above, but even for purposes as diverse as the registration of small and medium enterprises<sup>23</sup> and to register births and deaths<sup>24</sup>. The introduction of Aadhaar and related technology for implementation of the National Food Security Act thus took

place against the backdrop of a widespread expansion of the use of Aadhaar but had a corrosive effect on program implementation.

- 33 As per law, applying for the Aadhaar number was deemed “voluntary” for all residents of India.<sup>25</sup> The spread of implementation of the technically voluntary Aadhaar number coincided with a period in 2016/17 when there was some optimism in relation to the implementation of social protection programs, including the Public Distribution System (PDS) for subsidized food grain (see Drèze, et. al. 2016, Nayak and Nehra 2017, cited above). This optimism in relation to PDS implementation was disrupted by the use of Aadhaar. Exclusion from social protection was not entirely new (see for instance Drèze and Khera, 2010, on inclusion and exclusion errors in the identification of Below Poverty Line households). The deployment of *technological* hurdles to access citizenship rights were, nonetheless, a new form of exclusion from social protection. These hurdles along with the deployment of conservative executive interpretations of law (explained later in this section) led to a reigning in of rights defined under NFSA.
- 34 As a consequence of Aadhaar based implementation of the PDS, pinning down responsibility for poor implementation on identifiable individuals at the level of the Panchayat (in rural areas) or Circle office (in urban areas) or District became increasingly difficult. In fact, this new form of exclusion from social protection gave state functionaries an excuse for apathy and poor implementation, since technological errors have no human face. Reliance on the Aadhaar system has also been found to be problematic because the system excludes individuals who do not have an Aadhaar card. Where a beneficiary has an Aadhaar card, the biometrics and internet dependent delivery system may still not work if biometrics are not recognized by the Point of Sale (POS) device used to authenticate sale of subsidized food grain, or if the machine does not work due to electricity or internet connectivity issues.
- 35 In relation to Aadhaar related erosion of access to rights, the Delhi survey found that of the sample households, 44 per cent had between one and four household members missing from their ration cards. For 48 percent of households that had a family member missing from the ration card, a stated reason for exclusion of these household members was absence of an Aadhaar card (Nayak and Nehra 2017). Importantly, for a majority of households accessing the PDS under the NFSA<sup>26</sup>, five kilograms of food rations per person per month are allocated on the basis of the number of family members. Thus for each missing member on a ration card, the family lost a significant quantity of food rations per month. Even worse deprivations, and indeed “attacks on the poor” highlighted by Bhasha Singh towards the beginning of this paper, have been documented by the Right to Food campaign in the state of Jharkhand. Access to rations was found to have been denied in households where the ration card was not linked with Aadhaar, leading to starvation deaths in several documented cases (Right to Food Campaign India 2018).<sup>27</sup>
- 36 Yet, as highlighted earlier, in addition to Aadhaar based disruptions, executive orders of the government that do not pertain to Aadhaar have also contributed to eroding access to rights. The most crucial executive order of the central government related to PDS implementation after NFSA enactment was the PDS Control Order, 2015. In this order, the central Government of India imposed a state-wise numerical cap on PDS beneficiaries based on census data for 2011. However, this numerical cap on beneficiaries did not account for a yearly growth rate in the population since it was to be revised only after data from the next census became available. Thus as part of PDS

implementation under NFSA, the Government of Delhi was mandated by the Government of India to identify 72.78 lakh beneficiaries to whom PDS entitlements would be targeted. This was an executive order fundamentally at odds with the expansion of the “right to food” under the NFSA. Rather than a year on year expansion in the number of beneficiaries to honor the percentage of the population mandated to be covered under NFSA, the number of beneficiaries was to be frozen at the aforementioned figure based on the 2011 Census, until the date of release of the next census figures.

- 37 The revised PDS did away with the former Below Poverty Lines (BPL) and Above Poverty Line (APL) categories of households and classified beneficiary households as “priority households” and households that were to get PDS benefits under the “Antyodaya Anna Yojana.”<sup>28</sup> Due to the new classification of households as well as the rationale of increasing transparency and reducing corruption in PDS implementation, all new NFSA-PDS ration cards issued in Delhi from 2013 onwards were seeded with Aadhaar numbers of household members.<sup>29</sup> A parallel process of Fair Price Shop automation, or the use of Aadhaar and internet enabled POS devices at PDS shops, had also been unfolding in Delhi. Delhi Chief Minister Arvind Kejriwal from the Aam Aadmi Party (AAP), or “Common Man’s Party,” announced in October 2016 that all fair price shops in the state would be equipped with Aadhaar enabled POS devices by March 2017. Meanwhile, in February 2017, the central Government of India issued a Gazette Notification mandating the use of Aadhaar in PDS service delivery. This came three and a half years after Aadhaar based implementation of the PDS in Delhi had, in one way or another, already started. Thus, although Aadhaar enabled *distribution* of food grain had not commenced in 2013, Aadhaar seeded PDS ration cards were already being issued in Delhi, under the National Food Security Ordinance, even before the NFSA was passed by the Indian Parliament. However after the Gazette notification in February 2017, the Delhi Right to Food Campaign (DRRAA, *Delhi Rozi Roti Adhikaar Abhiyaan*) filed a writ petition in the High Court of Delhi seeking transparency in PDS implementation and challenging Aadhaar based implementation of the PDS in Delhi.<sup>30</sup> It was argued that this form of implementation leads to exclusions and significant hardships for persons and households entitled to subsidized food grain under the PDS. That the entitled persons are poor and economically vulnerable was emphasized in the petition filed in court.
- 38 These challenges to Aadhaar based implementation of the PDS from civil society groups led to the AAP withdrawing its support for PDS implementation routed via Aadhaar and POS enabled devices. Instead, in early 2018, the AAP put its political weight behind demanding that PDS food grains should be delivered to the doorsteps of beneficiary households. In May-June 2018, this matter was at the center of a tussle between the elected Government of Delhi run by the AAP on the one hand and the un-elected, but constitutionally mandated, administrative head of Delhi state, the Lt. Governor (LG) of Delhi, on the other.
- 39 The DRRAA’s legal challenge, seeking transparency in PDS implementation in Delhi is ongoing, though the Supreme Court, in 2018 permitted the use of Aadhaar for social protection programs. These legal challenges in courts of law have also gone along with the organization of both Delhi state level and National level public hearings on flawed Aadhaar based implementation of the PDS (such as the public hearing on 15 March 2018, cited earlier in this paper).

- 40 These multiple challenges to Aadhaar enabled PDS implementation are cited not to suggest that all flaws in implementation have successfully been blocked by social movements using legal and other means of protest. Rather, it is being suggested that rights-in-text almost necessarily require the “use of law beyond the law” (Santos 2002), or collective claim making, for them to be realized.
- 41 The next section of this paper will look at empirical material related to civil society actors engaged in the implementation of new rights, particularly with a view to detailing the actors involved in the complex process of translating rights-in-text to rights that can be claimed. As mentioned earlier, the present challenge to coded citizenship by social movements needs to be located in the “long history” of collective action. That history might reveal that in the world of the uniquely anomic, Aadhaar tagged, coded citizen, who faces shrinking social protection, tools of contention such as litigation based on Constitutional law, protests in parliament and on the streets, the use of letters of protest, as well as the use of social media, are all crucial for the law to retain emancipatory potential.

## Social movements and rights legislations

- 42 This section relies on interviews conducted with members of social movements, the authors’ own location as a participant in the Right to Food campaign, and on a survey of the well catalogued and extensive archives of the Right to Food Campaign.<sup>31</sup>
- 43 This section highlights that there is a heterogeneous group of civil society actors engaged with demanding effective implementation of legislations like the NFSA and NREGA. A vast majority, if not all of them, work on the question of “claiming citizenship” and “deepening democracy” (Harriss 2001), by seeking transparency in implementation of new rights legislations and by keeping the public debate related to these legislations alive.
- 44 The types of civil society actors engaged with implementation of the NFSA and NREGA<sup>32</sup> can roughly be classified into the following categories:
- a. Grassroots organizations funded by individual donations and fees levied on members (as against funds from institutional donors, such as national NGOs, bilateral or multilateral agencies).
  - b. Non-government organizations that may receive institutional donor funding. These organizations may do work as diverse as academic research on implementation of rights based legislations; documenting violations of rights; filing Right to Information applications to understand why rights violations are taking place; carrying out “social audits” related to NFSA implementation.
  - c. Registered trade unions typically funded by a membership fees and individual donations (for example, the *Jan Jagran Shakti Sangathan* (JJSS) in Araria district, Bihar). In addition to tasks linked to a) and b), in relation to NREGA, the JJSS was also involved in a public interest litigation<sup>33</sup> filed in the Bihar High Court, challenging Government of India and Government of Bihar orders related to the reduction of wages paid to NREGA workers. The JJSS was thus using courts of law to push for better NREGA implementation.
  - d. Umbrella organizations made up of civil society groups, such as the Delhi Right to Food Campaign (DRRAA, or *Delhi Rozi Roti Adhikaar Abhiyan*), which include individuals, academics, students and activists, some of whom may be formally employed by, or enrolled in, universities and other institutions. As mentioned above in the context of Delhi, the DRRAA

filed a writ petition in the Delhi High Court in 2017 that, apart from other matters, questioned the use of Aadhaar in PDS implementation.

e. Informal civil rights groups, including collectives of students, academics, lawyers and activists. Here too, individuals may have formal institutional affiliations, for instance with NGOs and universities. This fluid and heterogeneous category may be associated with a range of activities, including those mentioned above, as well as conducting surveys on social policy implementation. These groups are also involved in awareness generation on rights legislations by way of creating easy to read posters and videos for circulation on social media platforms. They are also involved in running campaigns on social media platforms that aim to scrutinize the use of Aadhaar for social policy implementation.<sup>34</sup>

45 The above is not an exhaustive list and there may be overlaps in the categories cited above. It is crucial to note, however, that there is a heterogeneous set of actors engaged in both claiming citizenship and checking the erosion of citizenship through technological tools such as Aadhaar.

## Conclusion

46 This paper discusses the politics involved in the process of claiming citizenship rights under legislations such as the NFSA. Claiming citizenship is inherently contentious and involves processes of struggle (Kabeer 2005). In order to understand and contextualise the present precarity of coded citizenship rooted in technological devices such as the Aadhaar biometric system, this paper starts by taking a look back at discussions related to citizenship rooted in Constitutional law. As is highlighted by Baxi, the law and constitutional fundamental rights were “used as tools by activist groups” to forge a new, progressive politics in the period following the Internal Emergency in India (1975-1977). Social action litigation expanded the idea of citizenship via progressive and expansive interpretations of key Articles of the Constitution. Several years later, building on the work of social movements, laws such as the NFSA and NREGA have expanded the idea of citizenship, by detailing justiciable civil, economic and political rights. These legislations created the possibility of progressive social change and of a deepening of democracy. In more recent years, the statutory expansion of citizenship rights has faced a backlash with de jure rights being reigned in, de facto. This reigning in of rights has been done in part via the use of executive orders of the government. The Aadhaar based system of implementation served to create technological hurdles in the process of claiming rights. Thus expansions of rights have come to be circumscribed with the introduction of a form of precarious and coded citizenship. In everyday state and society relations in India today, anomic, isolated and coded citizens interface with a “digitized state.” As a result, demanding accountability in the functioning of government programs is more complex than it was previously. Yet, this paper argues that the specter of coded citizenship must be viewed in perspective. Social movements, deploying old and new tools of contention and demanding probity in the implementation of laws and government programs, are key to making sense of this landscape.

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## NOTES

1. This statute was renamed the Mahatma Gandhi National Rural Employment Guarantee Act in 2009. It will be referred to as the NREGA in this paper.
2. The Right of Children to Free and Compulsory Education Act, 2009.
3. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
4. The author is grateful to co-panellists at ECSAS, Paris, 2018, for discussions on "coded citizenship."
5. Civil Writ Petition, 196/2001, PUCL v. Union of India & Others. The final judgement in this case was delivered by the Supreme Court in 2017.
6. Kavita Srivastava, Convenor, People's Union for Civil Liberties (PUCL), Rajasthan. (Discussion at Right to Food campaign meeting, December 2017, New Delhi). The roots of this campaign can be traced to 2001, when the Akaal Sangharsh Samiti (Drought Action Committee) challenged a lack of government initiative in implementing drought relief works in Rajasthan against the backdrop of a severe drought. See also Drèze 2004.
7. This refers to the Supreme Court of India located in New Delhi and High Courts of States, often located in State capitals, but sometimes also located in other prominent cities. In terms of hierarchy of Judiciary, the "higher courts" mentioned in the text are above District and Sessions Courts.
8. Writs of mandamus are orders by a superior court to a lower court or public officer to perform certain duties.
9. Writs of habeas corpus are orders by a superior court to a lower court or detaining authority to produce a detainee before the court, along with a justification for detention.
10. The term "locus standi" refers to a petitioner or appellant's legal standing to file a writ petition.

11. For the Indian context, Upendra Baxi pointedly uses the term “social action litigation” to distinguish Indian “judicial activism” from the American tradition of “public interest litigation,” which has its own specific characteristics (Baxi 1985:108). The term ‘public interest litigation’ however, is popularly used in the Indian context.

12. Baxi (1985:118) highlights that about seventy-five such writ petitions were filed in the higher courts in India in the 1980-1982 period alone.

13. In the Indian context, the term “fundamental rights” is used for the civil, political, economic and social rights laid out in Part III of the Constitution of India.

14. In addition to Constitutional law, other legal provisions that were key to the Sanjit Roy case were, Section 3 of the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act 1964, and the Minimum Wages Act, 1968. The legal validity of the 1964 Rajasthan Famine Relief Law was challenged by the petitioner Sanjit Roy.

15. This is a landmark judgement that has been used by activists working on the NREGA in several cases, including in a social action litigation filed in the High Court of Bihar, at Patna.

16. 2002. Vol 2. SCC 343.

17. Almitra Patel v. Union of India (2000 Vol 3 SCC 575), cf Bhushan 2004.

18. Member of Parliament, Rajya Sabha (Upper House), Communist Party of India. D. Raja was speaking at a public meeting organised by the Right to Food Campaign in Delhi on 15 March 2018.

19. Admittedly, there are many more such examples. Neil Stammers (2003) for instance suggests that social movements have demonstrated their capacity to “make power visible,” constructing and applying rights claims in their struggles, in contexts as diverse as the English, American and French revolutions, the rights framed by the workers’ and socialist movements of nineteenth century Europe, the rights claimed by anti-colonial movements and by more contemporary “new social movements” in diverse contexts.

20. Vide Section 3(2), NFSA, 2013. 75 percent of the rural population and 50 percent of the urban population is covered at an aggregated national level. The Government of India determined the state wise percentage coverage of population based on the 2011-2012 NSSO Survey on consumption expenditure (p.2, CAG report 54 of 2015, cf Nayak 2019).

21. Hereafter referred to as the Delhi Survey. The survey was funded by Ambedkar University Delhi and was conducted by this author with assistance from Shikha Nehra and university students in 2016. Sample households were randomly selected from beneficiary lists of three fair price shops (FPS) in each of the four mentioned districts of the National Capital Territory of Delhi.

22. There are curious exceptions. Aadhaar based identification is not required for the purpose of making donations to political parties.

23. Notification number 85(E), dated 10 January 2017.

24. Press Information Bureau notification dated 4 August 2017, issued by the Ministry of Home Affairs. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=169622> retrieved 1 March 2019.

25. Section 3 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, benefits and services) Act, 2016.

26. This is the allocation for “priority” households under the NFSA. A smaller proportion of households under the Antyodaya scheme for the poorest of the poor, gets a larger food allocation per month as per law.

27. <https://thewire.in/rights/right-to-food-campaign-issues-statement-on-jharkhand-starvation-deaths>

28. As per Section 3, NFSA, 2013.

29. NFSA-PDS ration cards issued in Delhi from 2013 onwards were smart cards shaped like credit cards. The Aadhaar numbers of beneficiaries were linked, or electronically seeded with the cards. When used with an internet enabled point of sale device, sale of food grain, to an NFSA-PDS beneficiary could be authenticated via the use of biometrics linked to the beneficiary's Aadhaar number. However, this apparent technological fix often proved to be problematic as discussed in this paper.

30. Civil Writ Petition 2161 of 2017 filed in the High Court of Delhi.

31. [www.righttofoodindia.org](http://www.righttofoodindia.org)

32. Campaigns for the Right to Food and the Right to Work are closely linked.

33. The term public interest litigation is being used here interchangeably with Baxi's term social action litigation used earlier in this paper.

34. For instance, student groups led by economists Jean Drèze and Reetika Khera have been conducting surveys on social policy implementation in various parts of India from 2002 onwards. These surveys have been extensively documented, including in Drèze and Khera 2017.

## ABSTRACTS

In the 2000s, "rights-based approaches" to development acquired prominence in national level social policy in India. From 2005 to 2013, the Indian parliament passed several laws that effectively created new legal "rights." This included a national legislation on the "right to work" under the National Rural Employment Guarantee Act (NREGA) enacted in 2005 and a National Food Security Act (NFSA) on the "right to food" enacted in 2013. In text, rights created under these legislations expanded the idea of citizenship by defining justiciable claims that could be made against the state. The enactment of these legislations drew on a history of collective action and litigation centered on constitutional law and created the possibility of a new, progressive politics. Yet this positive expansion of citizenship rights has in recent years encountered a backlash and a de facto reigning in of rights. Part of this erosion of rights has been due to the Aadhaar based digital technologies using biometrics that were introduced as a key tool of implementation of social protection programs implemented under laws such as the NREGA and NFSA. Despite the present context of Aadhaar based erosion of citizenship rights, and the specter of coded and precarious citizenship, this paper argues that challenges to implementation of social policy need to be viewed in perspective. The role of social movements has been fundamental to the emergence of the aforementioned policies and legislations. Moving forward, the role of civil society actors in demanding probity in implementation of social policy, and in the reclaiming of citizenship, is critical for ensuring that new rights legislations retain their progressive potential.

## INDEX

**Keywords:** citizenship, civil society, law, National Food Security Act (NFSA), rights, social movements

## AUTHOR

**NANDINI NAYAK**

School of Development Studies, Ambedkar University Delhi, India.